

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100239

ORDER DENYING SECOND JOINT
REQUEST FOR CONTINUANCE

Student filed the due process complaint on October 2, 2012. The Office of Administrative Hearings (OAH) issued an initial scheduling order. On November 6, 2012, OAH granted the parties' joint request to continue, setting mediation for January 22, 2013, the prehearing conference (PHC) for February 27, 2012, and the due process hearing for March 4 through 7, 2013. The parties subsequently reschedule the mediation for February 14, 2013; they cancelled this mediation on February 11, 2013.

On February 25, 2013, Student's counsel filed the parties' Second Request to Continue, seeking to hold the mediation on May 8, 2013, the PHC on May 22, 2013, and the hearing on May 28 through 21, 2013. The motion is signed by representatives for each party.

Applicable Law

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Analysis and Discussion

The motion states that the parties requested the November 2012 continuance to allow for completion of independent assessments.¹ The parties now state that the independent assessor is unable to complete them within the original timeline, stating that an IEP has been scheduled for May 7, 2013. The request does not state what assessments are delayed, why there is a delay, or why the delay continues for more than two months.

Almost five months have passed since the initial filing. The PHC is scheduled in two days and the hearing is set for the following week. The parties make no attempt to explain why they were unaware of the assessments' status. Other than stating the assessments are not done, the parties provide no evidence to demonstrate good cause for a continuance at this late date.

The parties also request that the hearing be continued to May 28 through 31, 2013. The moving papers cite no basis for seeking to continue the hearing another 13 weeks, which is almost eight (8) months after the initial filing. Considering that the State and federal statutes and regulations require an assessment to be completed and reviewed in an IEP within 60 days of the assessment plan, a 13-week request to continue the hearing is unreasonable. Accordingly, the parties have failed to demonstrate good cause for such a lengthy delay in bringing this matter to hearing.

The parties' second joint request to continue is denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

Dated: February 25, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings

¹ The November 2012 joint request made no mention of the assessments and provided no reason for the continuance.